In the High Court of Punjab and Haryana at Chandigarh

Crl. Appeal No. 380-DB of 2001 (O&M)
Date of Decision: April 01, 2011

Charanjit Singh and another

---Appellants

versus

State of Punjab

---Respondent

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE GURDEV SINGH

***

Present: Mr.Kapil Aggarwal, Advocate,
for the appellants

Mr.S.S.Dhaliwal, Addl. Advocate General, Punjab

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GURDEV SINGH, J.

The appellants-accused, Charanjit Singh and Om Parkash Singh, were convicted by the Addl. Sessions Judge, Jalandhar, vide judgment dated 20.7.2001, for the offences under Sections 302, 324 read with Section 34 IPC

and were sentenced as under:-

Charanjit Singh

Sr. No	***Under Section***	***Sentence imposed***	***Fine***	
1	302 IPC	To undergo rigorous imprisonment for life	5000/-	In default of payment of fine to further undergo rigorous imprisonment for a period of six months
2	324/34 IPC	To undergo rigorous imprisonment for two years	-	

Om Parkash Singh

Sr. No.	***Under Section***	***Sentence imposed***	***Fine***	
1	302 /34 IPC	To undergo rigorous imprisonment for life	5000/-	In default of payment of fine to further undergo rigorous imprisonment for a period of six months
2	324IPC	To undergo rigorous imprisonment for two years	-	-

The present appeal has been filed against that conviction and sentence.

Prosecution case, in brief, is that Kuldip Kumar, deceased, younger brother of Paras Ram, complainant, PW-5, was the President of the Dharamshala of his village. There was one Gurudwara by the name of Baba Mohinder Singh in the village, where a fair used to be held in the month of June every year. Satnam Singh was the Gaddi Nasheen of that Gurudwara. Both the accused are the real brothers of Satnam Singh, who along with their relations had been coming to the village to attend that fair and on that account

were known to the complainant. Even in the month of June, 1999, they had come to attend the fair. On 8.6.1999, at about noon time, they were playing cricket in the Dharamshala of the village and were prevented from doing so by the deceased in his capacity as the President of the Dharamshala. On that account, a quarrel took place between them. The complainant and Satnam Singh intervened and they were prevented from quarreling with each other. Thereafter, the complainant and the deceased went to their fields. At about 10-00 p.m., they were coming back to their house and were being followed by Satnam Singh, who was coming on his tractor. When they reached near the electric tube well of Swaran Singh, both the accused were standing at that place. Om Parkash Singh exhorted the other accused to catch hold of them and to teach them a lesson for stopping them from playing in the Dharamshala. Thereafter, Om Parkash Singh, took the deceased in his grip by holding him with his arms from the back side, whereas Charanjit Singh gave two blows with his small kirpan on the left lower side of the chest and left flank. The complainant raised an alarm, which attracted Paramjit Singh, PW-6 to the spot, who came ahead to save the deceased from the accused, upon which Charanjit Singh gave a blow with his kirpan on his left arm. When the alarm was raised by the complainant and others, both the accused escaped from the spot with the said kirpan. This occurrence was witnessed by the complainant and the other witnesses in the light of the electric bulb, which was installed in the said electric tube well. After arranging for the conveyance, the deceased was removed to the PHC, Adampur, from where he was referred to Civil Hospital, Jalandhar. In that hospital, he was medico legally examined by Dr. Gurpal Singh, PW-4, who found two injuries on his person and the same were detailed in the Medico Legal Report, Ex. P.G. Paramjit Singh was medico legally examined in PHC, Adampur, by Dr. Bhupinder Pal Singh, PW-1, who found

one injury on his person and the same was detailed in the Medico Legal Report, Ex. P.B. Dr. Gupral Singh, PW-4, sent intimation about the admission of the deceased in the hospital to the police Station. The deceased succumbed to his injuries. An intimation to that effect was sent to the police station by the doctor. The complainant was proceeding to the police station to lodge a report, when Inderjit Singh SI, SHO, PW-9, met him on the main road in the limits of village Madaran. At that place he made statement Ex. PH, about this occurrence before the SI, who after making his endorsement, Ex. PH/1, upon the same sent that to the Police Station and on the basis thereof, formal FIR, Ex. PH/2, was recorded against the accused under Section 302/34 IPC. The SHO accompanied by the complainant, came to Civil Hospital, Jalandhar, and prepared the inquest report, Ex. PE, in respect of the dead body of the deceased and sent the same for post mortem examination, along with his application, Ex. PF. Paramjit Singh produced his blood stained shirt before the SI., who converted the same into a parcel and sealed the same with his seal "IS". The sealed parcel, Ex. P.2, was taken into possession, vide Memo Ex. PM. The autopsy on the dead body of the deceased was performed by Dr. Kanwaljit Singh Bawa, PW-3, who found two ante mortem injuries on the same and gave his opinion that the cause of death was hemorrhage and shock due to those injuries and the same were sufficient to cause death in the ordinary course of nature. After the post mortem examination, the wearing apparels found on the dead body, were handed over by the doctor to Sharanjit Singh, Constable, who produced the same before the SI and the same were converted into a parcel, which was sealed with the seal of SI and was taken into possession, vide Memo Ex. PO. The SI went to the place of occurrence and after inspecting the same prepared the rough site plan, Ex. PP, with correct marginal notes. He collected the blood stained earth, which was put in a small plastic box and the same was

converted into a parcel and was sealed with the said seal. That sealed parcel, Ex. P.6, was taken into possession, vide Memo Ex. P.J. One torn portion of the shirt of the deceased was found lying at the spot and the same was taken into possession, vide Memo Ex. PL. One wooden comb of the deceased was found at the spot, which was converted into a sealed parcel and was taken into possession, vide Memo Ex. PK. After coming back to the police station, the SI deposited the case property with the MHC. The subsequent investigation was conducted by Sucha Singh, SI, PW-8. On 15.6.1999, he arrested both the accused. On 17.6.1999, he interrogated Charanjit Singh-accused, in the presence of the complainant and Amrik Singh, ASI, upon which he made a disclosure statement that he had kept concealed one small kirpan, stained with blood, on the back side of Godrej Storewell, under the clothes in the residential room of Gurudwara, Matowali, about which, only he had the knowledge and could get the same recovered from that place. In pursuance of that disclosure statement,Ex. PL, he got recovered one small kirpan, Ex. P.1, from the said place. The SI prepared the rough sketch, Ex. PL/2, of that kirpan and converted the same into a parcel and sealed the same with his seal "SS". The sealed parcel was taken into possession, vide Memo Ex. PL/1, and on coming back to the police station, deposited that sealed parcel with the MHC. The sealed parcels containing the blood stained earth, small kirpan, wearing apparels of the deceased and the portion of the shirt of the deceased, recovered from the spot, were sent to FSL, Punjab, Chandigarh, on 24.6.1999, through Sharanjit Singh, Constable and were delivered at that place with seals intact. After analysis, it was reported by the Director of that laboratory that the same were stained with human blood. The map on scale, Ex. PN, of the place of occurrence was got prepared from Dalip Singh, Draftsman, PW-7. After the completion of the investigation, the challan was put in before JMIC, Jalandhar,

who committed the same to the Court of Session on the ground that the offence under Section 302 IPC was exclusively triable by the Court of Session. The case was entrusted to Additional Sessions Judge, Jalandhar, for the trial of the accused, who found sufficient grounds for presuming that Charanjit Singh-accused committed offences punishable under Sections 302 and 324 IPC , whereas Om Parkash Singh, accused, committed offences punishable under Sections 302, 324 read with Section 34 IPC. They were charged accordingly, to which they pleaded not guilty and claimed trial.

To prove the guilt of the accused, prosecution examined Dr. Bhupinder Pal Singh Randhawa, PW-1, HC, Mohinder Singh, PW-2, Dr. Kanwaljit Singh Bawa, PW-3, Dr. Gurpal Singh, PW-4,Paras Ram, complainant, PW-5, Paramjit Singh, PW-6, Dalip Singh, Draftsman, PW-7, Sucha Singh SI, PW-8 and Inderjit Singh SI, PW-9.

After the close of the evidence by the prosecution, the learned trial court examined the accused and recorded their statements under Section 313 Cr.P.C. The incriminating circumstances appearing against them in the prosecution evidence were put to them in order to enable them to explain the same. They denied all those circumstances and pleaded their false implication. It was stated by Charanjit Singh-accused, that he is Amritdhari Sikh and had been doing the Shabad Kirtan. He had been wearing all the symbols of Amritdhari Sikh i.e. *Kangha, Kachha, kesh, kara and kirpan(gatra).* On the day of occurrence, the deceased suddenly emerged and abused him and his religion and also committed the contempt of his religion. The deceased pulled his turban and long hair and in the process, his *kangha* fell down. The deceased pressed his throat in order to kill him and apprehending danger to his life and while acting in self defence, he caused injuries to the deceased. Paras Ram, complainant, Paramjit Singh, PW and Om Parkash Singh were not

present at that time. It was stated by Om Parkash Singh-accused, that he was not present at the time of occurrence. The accused were called upon to enter on their defence and they examined Jaswinder Singh, Photographer, DW-1, Parminder Singh, DW-2, Sukhraj Singh, DW-3 and also tendered the Admission Card, Ex. D-9 and Identity Card, Ex. D-10 in their defence evidence.

After going through the evidence so produced on the record and hearing Public Prosecutor for the State and learned defence counsel for the accused, learned Sessions Judge convicted and sentenced the accused, as aforesaid.

We have heard learned counsel for both the sides.

It has been submitted by learned counsel for the accused that both the accused are Amritdhari Sikhs and had come to the village for taking part in the Kirtan Darbar. On the day of occurrence Charanjit Singh-accused had gone for answering the call of the nature when Kuldip Kumar-deceased, suddenly appeared on the scene and abused him as well as his religion and also humiliated him by removing his turban and pulling his long hair. Thereafter, the deceased tried to strangulate the accused and it was only thereafter that he caused injuries to the deceased in the right of his private defence. That stand was taken by the accused in his statement under Section 313 Cr.P.C. and the alleged eye witnesses were also cross examined on that aspect of the case. Om Parkash Singh-accused was never present at the time of occurrence and he was falsely implicated. The accused had been able to make probable the stand, so taken by them, by cross examining the prosecution witnesses to that effect. In the last, he submitted that no such injury was caused by Om Parkash Singh-accused. He could not have been convicted by resorting to Section 34 IPC as the prosecution evidence falls short of proving that the injuries were caused by

the other accused in furtherance of common intention of both the accused. Even if, the story put forward by the prosecution is believed, even then, this accused could not have been convicted by resorting to Section 34 IPC, as he never exhorted Charanjit Singh-accused, to commit the murder of the deceased and he never knew that Charanjit Singh would cause injuries of such nature which might result in the death of the deceased. He prayed for the acquittal of the accused. He has placed reliance on **Ajay Sharma vs. State of Rajasthan 1998(4) RCR (Criminal)** and **Rameshish Yadav vs. State of Bihar 1999(4) RCR(Criminal) 171.**

The prosecution version in the court was unfolded by Paras Ram, complainant, PW-5. He deposed about each and every fact, which constitute the prosecution version. He not only made his statement about the motive on the part of the accused to cause injuries to Kuldip Kumar, deceased, which resulted in his death, but also deposed about the manner in which the injuries were caused to the deceased and Paramjit Singh. He specifically deposed that on 8.6.1999, at about 10-00 p.m. he along with his brother Kuldip Kumar, deceased, was returning from the fields and was going to their house. When they reached near the electric motor of Swaran Singh, both the accused were standing at that place. Om Parkash Singh-accused, raised a lalkara that Kuldip Kumar be taught a lesson for stopping them from playing in the Dharamshala and thereafter, caught hold of Kuldip Kumar, deceased, and Charanjit Singh, accused, gave blows with his kirpan which hit him on the left side of his chest and left flank. They raised an alarm, which attracted Paramjit Singh, who tried to save Kuldip Kumar, upon which Charanjit Singh gave blow with his kirpan on his right arm near the elbow. This statement of the complainant was fully corroborated by Paramjit Singh, PW-6, whose presence at the spot cannot be doubted as he himself had received injury at the hands of the accused.

This ocular evidence produced by the prosecution stands corroborated by the medical evidence furnished by Dr. Bhupinder Pal Singh, PW-1, and Dr. Gurpal Singh, PW-4. The former witness medically examined Paramjit Singh on the day of occurrence itself at 10-55 p.m. and found the following injury on his person:-

1. An incised wound 2 cm X 0.5 cm X 0.5 cm on the back of left fore-arm, 8 cm below joint. Wound was bleeding

According to the later witness, he medico legally examined Kuldip Kumar and found the following two injuries on his person:-

1. Incised wound 1.75 cm x 0.75 cm was present on the left side of chest, 9 cm below the nipple and 13 cm from the mid-line, perfuse bleeding was present. Probing was not done.
2. Incised would 1.5 cm x 0.75 cm was present on the left lateral side of abdomen, 25 cm from the umbilicus and 16 cm from the left anterio-superior illiac spine, perfuse bleeding was present. Probing was not done.

The accused, have not challenged the present occurrence in which the injuries were caused by Charanjit Singh, accused to Kuldip Kumar. As already said above, that accused has taken the right of private defence of person as according to him, he caused those injuries to the deceased when he tried to throttle his neck. In view of the defence, so taken up by the accused and the submissions made by their counsel, the following points arise for determination for the decision of this appeal:-

1. Whether the injuries were caused to Kuldip Kumar-deceased, by Charanjit Singh, accused in the exercise of the right of private defence of his person?
2. Whether Om Parkash Singh, accused was not present at the

time of occurrence and has been falsely implicated?

3. Whether the death of Kuldip Kumar-deceased, was caused in furtherance of the common intention of both the accused?

Point No. 1

The accused had no such defence when Paras Ram, PW-5, was examined in the Court. It was never suggested to him that such injuries were caused by Charanjit Singh-accused, in the exercise of the right of private defence. The only suggestion put to him was that he was not present at the time of occurrence and he denied that suggestion. He was cross examined at length by the accused but in that process they had not been able to extract even a single circumstance, on the basis of which, it may be held that he was not present at the time of occurrence and had been introduced into the picture subsequently. While cross examining Paramjit Singh, PW-6, the accused never challenged his presence at the time of occurrence. It was suggested to him that he had received injuries while intervening at the time Charanjit Singh, accused, was causing injuries to Kuldip Kumar, deceased, in the right of his private defence. The way in which he faced the cross examination, it become crystal clear that he is a witness, who has come out with the truthful version in the court. When the accused grappled with the deceased, *patka* and comb of Charanjit Singh, accused, fell down. Nothing could be elicited during his cross examination, on the basis of which it may be said that either there was any such provocation given by the deceased or that the injuries were caused to him by Charanjit Singh, accused, in the exercise of his right of private defence of person. It was specifically put to him that Om Parkash Singh, accused, and Paras Ram, complainant, were not present at the time of occurrence and had denied that fact. The accused have failed to produce any evidence nor have been able to bring on record any such circumstance which may make the stand

of Charanjit Singh, accused, probable. In view of the cogent and convincing evidence produced by the prosecution, we are not inclined to hold that the injuries were caused to Kuldip Kumar, deceased, by Charanjit Singh, accused in the exercise of right of private defence of his person. Therefore, this point is answered against the accused.

Point No. 2.

Except the suggestion, put to Paras Ram, complainant, PW-5 and Paramjit Singh, PW-6, which was totally denied by them, no evidence has been produced by the accused for proving that Om Parkash Singh, accused, was not present at the time of occurrence. The accused has also not been able to elicit any such fact or circumstance during the cross examination of those witnesses, on the the basis of which, it may be concluded that the presence of that accused at the time of occurrence is doubtful or improbable. Specific statements were made by both those witnesses that Om Parkash Singh was also present with the other accused and it was he, who had exhorted Charanjit Singh, accused, to teach a lesson to the deceased and the blows with the small kirpan were given after he had taken the deceased in his grip after holding him by his arms from the back side. There is nothing on the record to conclude that Om Parkash Singh was not present at the time of the occurrence and that he has been falsely implicated. Therefore, this point is also answered against the accused.

Point No. 3

Section 34 IPC is only rule of evidence and does not create a substantive offence. To attract the provisions of that Section, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of the accused persons to commit the offence. Direct proof of common intention is seldom available and, therefore, such intention can

only be inferred from the circumstances appearing from the facts, proved on the record. In order to attract the provisions of this Section, it is necessary on the part of the prosecution to establish that each one of the accused share the common intention, which must be prior in time. It can be inferred from the acts or attending circumstances of the case and conduct of the parties.

What the prosecution has proved on the record, on the basis of which this common intention is to be inferred? It has produced evidence in the form of the trust worthy statement of Paras Ram, complainant,PW-5, Paramjit Singh, PW-6, that on the day of occurrence itself, both the accused were prevented by the deceased from playing cricket in Dharamshala of which he was the President, upon which an altercation had taken place and the complainant had intervened to stop them from quarreling. Both the accused were present together when the deceased had reached the place of occurrence. Om Parkash Singh, accused, had not only exhorted the other accused for teaching the deceased a lesson for stopping them from playing cricket in the Dharamshala, but had also caught hold of him from the back side when the kirpan blows were given by Charanjit Singh, accused. It is very much clear from the facts, proved on the record, that both the accused were sharing a common intention. They were to take revenge from the deceased. It cannot be said that Om Parkash Singh, accused, never knew that Charanjit Singh, accused, would give fatal blows to the deceased. That accused was already armed a small kirpan, which was taken out by him from his *gatra*. If Om Parkash Singh, accused was not sharing a common intention of causing the death of the deceased, he must have released the deceased from his grip after seeing that the kirpan had been taken out from the *gatra* by the other accused and if not at that time then, at least when the first blow was given on the chest. He continued to hold the deceased in his arms till both the blows were given.

From those acts, it can easily be inferred that he was sharing a common intention with Charanjit Singh, accused, to cause the death of the deceased. However, it can be said that he was not sharing a common intention with that accused while he gave injury to Paramjit Singh, who suddenly appeared at the scene and intervened to save the deceased. The facts of the cases/rulings cited by the counsel for the accused were different. In **Ajay Sharma's case (supra),** only overt act attributed to one of the accused was that he caught hold of the deceased and exhorted other other accused by saying *maro*. It was held by the Hon'ble Supreme Court that the said accused might not have the knowledge that Daljit Singh was having a kirpan under his stockings. In the present case both the accused are real brothers and Charanjit Singh has come out with the plea that he was Amritdhari Sikh and used to carry a small kirpan with him. The other accused was supposed to have the knowledge that he had been carrying a kirpan on his person and as already stated above, he never released the deceased from his grip even when he saw that the other accused had taken out the kirpan for giving a blow.

In **Rameshish Yadav's case (supra)** also the facts were altogether different. In that case two of the accused; namely Ram Pravesh Yadav and Ramanand Yadav caught hold of Tapeshwar Yadav, deceased, and the other accused; namely Samunder Yadav and Sheo Layak Yadav came with gandasi and gave blows on the head of that Tapeshwar Yadav resulting in his death. It was found that there was no prior meeting of minds of those accused and no declaration was made by those accused just before mounting of attack. In the present case, it was on the exhortion of Om Parkash Singh, accused, for teaching a lesson to the deceased, that Charanjit Singh gave blows with the help of his kirpan while the former accused was holding him from the back side. The injuries were given to the deceased by that accused in furtherance of

the common intention of both the accused. Therefore, this point is also decided against the accused.

In view of the decisions on the above points, we conclude that there is no merit in this appeal. However, in view of the observations made, while discussing point No. 3, Om Parkash Singh, accused, is to be acquitted of the offence under Section 324 read with Section 34 IPC (though wrongly convicted for the offence under Section 324 IPC).

In the result, the conviction and sentence of Charanjit Singh, accused, under Section 302 and 324 read with Section 34 IPC is upheld and the conviction and sentence of Om Parkash Singh under Section 302 IPC is upheld whereas he is acquitted of the offence under Section 324 read with Section 34 IPC.

The accused be taken into custody to serve the remaining part of their sentence.

The appeal is disposed of accordingly.

Records of the trial court be returned forthwith.

(HEMANT GUPTA)
JUDGE

(GURDEV SINGH)
JUDGE

April 01, 2011
PARAMJIT